IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 10141 OF 2004

K.V.Parameshwaran ..... Petitioner.

versus

R.K.Moorthy
since deceased through his
legal heirs Kum.Usha Krishna Moorthy.... Respondents.

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Shri Y.S.Jahagirdar with R.M.Savant for the petitioner.
Shri Mahesh N. Vepari for the respondents.

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CORAM ; R.M.S. KHANDEPARKAR, J.

DATED; 20TH DECEMBER, 2004.

P.C.;

1. Heard the learned advocates.

2. The petitioner challenges the decree of eviction passed by the trial court and confirmed by the lower appellate court on the ground of bonafide need of the respondent landlord and concurrent findings arrived at in respect thereof by both the courts below.

3. The only ground sought to be argued in the matter is that the respondent had disposed of the two flats which were in their possession in Kiran Kala Co-operative housing society and therefore the claim of the respondent landlord in relation to the said premises is not bonafide. It is the contention of the

learned advocate for the petitioner that the courts below have clearly held on analyses of the evidence on record that the respondent had two flats and the same were disposed of by the respondent. However, perusal of records disclose that apart from mere suggestion in that regard, no materials were placed on record. It was sought to be argued that it was within the knowledge of the landlord that those flats were acquired by the landlord and therefore it was necessary for the landlord to prove the same. Once it was the case pleaded by the petitioner that the respondent landlord had in his possession two flats, and they were disposed of, it was necessary for the petitioner to establish the same by leading cogent evidence in that regard. The courts below have clearly observed that the petitioner even did not bother to examine any witness including any office bearers of the committee of Kiran Kala Co-op.Hsg.Sty to establish the allegation against the respondent pertaining to sale of said two flats. Obviously therefore the petitioner had not discharged his burden in that regard and the question of the respondent landlord disproving his claim did not arise at all. The findings arrived at the courts below clearly disclose that considering the number of family members of the respondent, they are in need of the premises and refusal of relief would result in greater hardship to the respondent and therefore both the

courts below have decreed the suit for eviction of the petitioner from the suit premises on the ground of banafide need of the respondent. The findings in that regard being clearly borne out from the record and the same being in accordance with the provisions of law, do not warrant any interference in exercise of the jurisdiction under Article 227 of the Constitution.

Therefore the petition fails and it is dismissed.

4. At this stage on the request by the learned advocate for the petitioner, the execution shall remain suspended till 31st March 2005 subject to the petitioner and/or any adult member of his family shall file an undertaking within a period of four weeks from today.The undertaking shall be to the effect that the petitioner or any adult members of his family shall not indulge any third party right or interest in the premises nor will part with the possession and shall deliver peaceful vacant possession thereof to the respondent-landlord on or before 31st March 2005, and failing to submit the undertaking within the specified period, the order of suspension of eviction of decree passed today shall automatically vacated. The petition accordingly stands disposed of.

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